



STAFF REPORT

RESOLUTION MODIFYING A SCENIC EASEMENT FOR THE PRESERVATION OF SCENIC VALUES FOR THE ROSS WOODS DEVELOPMENT AT 1 DAVEY GLEN ROAD

Honorable Mayor and Council members:

Summary

Staff recommends the City Council modify the Scenic Easement for the Ross Woods Development at 1 Davey Glen Road to allow construction, repair, and maintenance of fencing within portions of the property previously prohibited from improvements of any kind. The modification would allow fencing to be constructed along the perimeter of a portion of the "Unimproved Areas" currently subject to the Scenic Easement restrictions.

Background and Discussion

On May 1, 2001, the Planning Commission approved a Detailed Development Plan (DDP) for a Planned Development for the 7.3 acre site which allowed construction of 32 single family detached/attached units on the lower eastern portion of the site (Parcel C - 2.66 acres), relocation of the historic Ross House, and preservation of open space on the western portion of the site (Parcel B - 3.58 acres). As part of the approval, an approximate one-acre parcel was dedicated to the City to allow for future construction of a public park (Parcel A). See Exhibit B for location of Parcels A, B, and C.

On June 12, 2001, the City Council accepted a Scenic Easement over the portion of the Planned Development which included the historic Ross House and open space areas to the west of the house. The terms of the Scenic Easement designated three areas within the 3.58 acre parcel; an "Improved Area", "Landscaped Area", and "Unimproved Area" (See Exhibit B). The Owners Residence (i.e. Ross House), and auxiliary improvements would be allowed within the "Improved Area", and landscape improvements (i.e. pathways, trails, water features, gardens, etc.) within the "Landscape Areas". No building, or improvements are allowed in the "Unimproved Areas" as that portion of the site has been designated to be preserved in its natural, open space condition.

STAFF REPORT

Modification of Scenic Easement: Ross Woods Development – 1 Davey Glen Road

October 28, 2003

Page 2

The Scenic Easement did allow fencing to be installed along the perimeter of the “Improved Areas”, dividing the “Unimproved Areas” from the other areas of the property (i.e. “Improved” and “Landscaped” areas).

In August 2003, Regis Homes (Ross Woods developer), under the direction of property owner Dr. Gene Lee, began construction of perimeter fencing within both the “Improved Areas” and “Unimproved Areas” of the property with the Scenic Easement overlay. The construction included removal of some existing private fencing for western residential properties bordering the subject site. The construction of the fencing within the western perimeter of the “Unimproved Areas” was in violation of the terms of the Scenic Easement agreement. The City initiated code enforcement and further construction was halted to allow assessment of the violations.

On August 14, 2003, the City received a letter from Dr. Lee which cited his concerns over the pending enforcement and rights to build fencing within his property (See Exhibit D). Staff then met with the City Attorney to discuss Dr. Lee’s letter, fencing options for the property, and potential modifications to the Scenic Easement. At that meeting, the Parks & Recreation Director indicated that installation of fencing surrounding the future park site would be a benefit and was already targeted as part of improvements for the park. Thus, the proposed scenic easement modification allows the opportunity to address both Dr. Lee’s concern of installation of adequate fencing for his property and the City’s intention of having fencing surrounding the perimeter of the future park site. The results of staff’s assessment of these issues is as follows:

- The City desires fencing for the perimeter of the future park parcel to create a designated boundary and reduce liability for this property. Under the terms of the current Scenic Easement, no fencing would be allowed along a large portion of the property’s perimeter.
- Adjacent residential properties of the subject site continue to be allowed to install fencing along their rear property lines, thus staff does not see any specific benefit to having a restriction of perimeter fencing along most portions the “Unimproved Areas” of Dr. Lee’s property.
- Staff recommends a no-fencing restriction for the “Unimproved Area” boundary line which runs parallel to the northern property border along Davey Glen Road, to allow for continued wildlife ingress/egress to the open space areas of the site.

Thus based on the aforementioned discussion, staff recommends the City Council adopt language modifications to the Scenic Easement as follows (new text in bold *italics*, deleted text in ~~strikeout~~):

Section 2. Prohibited Uses

STAFF REPORT

Modification of Scenic Easement: Ross Woods Development – 1 Davey Glen Road

October 28, 2003

Page 3

(d) Activity in the Unimproved Areas

The cutting down, or other destruction or removal of any tree and the construction of any type of building or improvements in the Unimproved Areas shown on Exhibit C, except as necessary to properly treat or remove trees certified to be diseased or to prevent erosion and The Unimproved Areas are to be preserved in their natural, open space condition. ***Fencing shall be permitted along the perimeter of all “Unimproved Areas”, with the exception of the 203.83 foot property line boundary running along Davey Glen Road shown in Exhibit C.***

Section 3. Reserved Rights

(k) Fencing

The right to construct, repair, modify and maintain fencing and gates along the perimeter of the ***“Unimproved Areas”, with the exception of the 203.83 foot property line boundary running along Davey Glen Road as shown in Exhibit C, where fencing of any kind is prohibited.*** ~~Improved Areas, dividing the Unimproved Areas from the other Areas of the Property and~~ ***Fencing shall be permitted*** anywhere within the Landscaped and Improved Areas. The materials, style and location of the fencing in other areas shall comply with applicable laws, rules, and regulations.

A resolution, accepting the modified Scenic Easement for the property, is attached for Council’s consideration. Full text of the Scenic Easement, with the proposed amended language is described in Exhibit A attached to this report.

Fiscal Impact

None.

Recommendation

Staff recommends the City Council adopt the attached resolution modifying the Scenic Easement.

Alternatives

1. Disapprove modification of the Scenic Easement.
2. Continue the matter with additional Council direction.

STAFF REPORT

Modification of Scenic Easement: Ross Woods Development – 1 Davey Glen Road

October 28, 2003

Page 4

Public Contact

Staff contacted adjacent property owners of the subject site informing them of the 10/28/03 public meeting.

Attachments

- I. City Council Resolution Modifying the Scenic Easement for the Ross Woods Development
- II. Amended Scenic Easement Agreement – Exhibit A
- III. Site Location Map – Parcels A, B, and C – Exhibit B
- IV. Location of Improved, Landscaped, and Unimproved Areas – Exhibit C
- V. August 14, 2003 Letter – Dr. Gene Lee – Exhibit D
- VI. June 12, 2001 City Council Minutes – Exhibit E

Respectfully submitted,

Carlos de Melo
Principal Planner

Craig A. Ewing, AICP
Community Development
Director

Jere A. Kersnar
City Manager

STAFF REPORT

Modification of Scenic Easement: Ross Woods Development – 1 Davey Glen Road

October 28, 2003

Page 5

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT
MODIFYING A SCENIC EASEMENT FOR THE PRESERVATION
OF SCENIC VALUES FOR THE ROSS WOODS DEVELOPMENT
AT 1 DAVEY GLEN ROAD

WHEREAS, on June 12, 2001, the City Council accepted a Scenic Easement for the preservation of scenic values on properties of the Ross Woods development at 1 Davey Glen Road; and,

WHEREAS, as part of the Ross Woods development approval, a one-acre parcel was dedicated to the City of Belmont to allow for future construction of a public park, adjacent to the property covered under the Scenic Easement; and,

WHEREAS, said Scenic Easement provides requirements for allowable improvements within the “Improved Areas”, “Landscaped Areas”, and “Unimproved Areas” of the 3.58 acre property covered under the Scenic Easement, and currently owned by Dr. Gene Lee; and,

WHEREAS, said Scenic Easement currently prohibits fencing along the perimeter of the “Unimproved Areas” as this area was designated to be preserved in its natural, open space condition; and,

WHEREAS, the City Council is required to approve the modification of the Scenic Easement on the property known Parcel B (Assessor’s Parcel 044-162-180), as described in Exhibit A; and,

WHEREAS, to address the property owners request for installation of adequate fencing for his property and the City’s intention of having fencing surrounding the perimeter of the future park site, modification of the Scenic Easement is necessary and appropriate; and,

WHEREAS, the City Council hereby adopts the staff report (dated October 28, 2003) and the facts contained therein as its own findings of fact; and,

WHEREAS, the City Council did hear and use their independent judgment and considered all said reports, recommendations and testimony herein above set forth.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Belmont hereby approves the modification of the Scenic Easement for the preservation of scenic values

STAFF REPORT

Modification of Scenic Easement: Ross Woods Development – 1 Davey Glen Road

October 28, 2003

Page 6

for the property described as Parcel B (Assessors Parcel 044-162-180), as contained on the attached Exhibit A.

* * * * *

I hereby certify that the foregoing resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting held on October 28, 2003 by the following vote:

AYES,
COUNCILMEMBERS: _____
NOES,
COUNCILMEMBERS: _____
ABSENT,
COUNCILMEMBERS: _____
ABSTAIN,
COUNCILMEMBERS: _____
RECUSED,
COUNCILMEMBERS: _____

CLERK of the City of Belmont

MAYOR of the City of Belmont

STAFF REPORT

Modification of Scenic Easement: Ross Woods Development – 1 Davey Glen Road

October 28, 2003

Page 7

II. AMENDED SCENIC EASEMENT AGREEMENT – EXHIBIT A

Recorded at the request
of and when recorded
return to:

Office of City Clerk
City of Belmont
1070 Sixth Avenue, Suite 311
Belmont, CA 94002

SCENIC EASEMENT

THIS SCENIC EASEMENT ("Easement") is granted this ____ day of November 2003, by CKD LIMITED PARTNERSHIP, a California limited partnership ("CKD"), to the CITY OF BELMONT, a California municipal corporation ("CITY").

RECITALS

A. CKD owns fee simple title to certain real property (referred to herein as the "Property") in the City of Belmont, County of San Mateo, California consisting of the approximately 3.58 acres identified as Parcel B as shown on the Parcel Map attached hereto as Exhibit A and as more particularly described in Exhibit B. The Property shall be subject to the terms of this Easement.

B. Certain owners will occupy and reside in a single-family dwelling on the Property, as permitted by applicable building, zoning and other laws (referred to in the "Owners Residence") and build other buildings, structures and improvements ancillary to the Owner's Residence, as permitted by applicable building, zoning and other laws. All the other buildings, structures and improvements ancillary to the Owner's Residence are collectively referred to as the "Auxiliary Improvements" as that term is defined In paragraph 5. (c). The Owners Residence and Auxiliary Improvements will be located within the areas designated the "Improved Areas" as shown on Exhibit C.

C. The areas designated as the "Landscape Areas" on Exhibit C are the areas in which the owners of the property may, in their discretion, install landscape improvements, including pathways, trails, stairs, water features, ponds, fountains, gardens, and the like, but in which no "Significant Structure" (defined below) may be constructed.

STAFF REPORT

Modification of Scenic Easement: Ross Woods Development – 1 Davey Glen Road

October 28, 2003

Page 8

D. The remainder of the property, other than the Landscape Areas and the Improved Areas, are designated as the "Unimproved Areas" on Exhibit C, which will remain in their natural condition, subject to the terms and conditions of this Agreement.

E. The Property possesses natural, scenic, open space values (collectively ""Scenic Values") including, but not limited to, the following: Approximately 2.5 acres of land with groves of trees, predominately made up of Eucalyptus, and the Property is adjacent to the property identified as Parcel A on Exhibit A which will be owned by the CITY and operated as a public park.

F. CKD has agreed to convey to CITY this Easement over the Property, subject to the terms, conditions, permissions and restrictions contained herein.

G. CITY intends to preserve and protect in perpetuity the Scenic Values of the Property.

GRANT OF SCENIC EASEMENT

NOW THEREFORE, in consideration of the above and for a valuable consideration, and the mutual covenants, terms, conditions, restrictions contained herein, and pursuant to the laws of California, CKD grants to CITY a SCENIC EASEMENT in perpetuity over the property as follows:

1. Purpose: The Purpose of this Easement is to prevent any use of the Property that will significantly impair or interfere with its Scenic Values, and at the same time to permit compatible residential use.

2. Prohibited Uses: The following activities and use of the property are prohibited, without express permission of the City:

(a) Subdivision of the Property: The property shall not be subdivided without the express permission of the City. Partition of the Property between owners or tenants in common shall remain or become subject to the terms of this Easement. Neither the creation of a life, joint tenancy, tenancy-in-common, future estate or similar legal estates in land, nor ownership all or in part by any corporation, partnership, trust or other entity, or lease of the Property is a subdivision under the terms of this Easement.

(b) Commercial or Industrial Development: Commercial or Industrial development of the property is prohibited.

(c) Tree Cutting: in the Landscape and Improved Areas: The cutting down, or other destruction or removal, of live trees, except when required or permitted by CITY for safety, removal of trees certified to be diseased, or fire protection, or when necessary to make space for the construction of any of the improvements permitted under paragraph 5 in the Landscape Areas or Improved Areas, or upon the written notification to and approval of CITY.

STAFF REPORT

Modification of Scenic Easement: Ross Woods Development – 1 Davey Glen Road

October 28, 2003

Page 9

(d) Activity in the Unimproved Areas: The cutting down, or other destruction or removal of any tree and the construction of any type of building or improvements in the Unimproved Areas shown on Exhibit C, except as necessary to properly treat or remove trees certified to be diseased or to prevent erosion and The Unimproved Areas are to be preserved in their natural, open space condition. ***Fencing shall be permitted along the perimeter of all "Unimproved Areas", with the exception of the 203.83-foot property line boundary running along Davey Glen Road shown in Exhibit C.***

(e) Archeological Resources: The excavation, removal, destruction, or sale of any archeological artifacts or remains found on the Property, except as part of an archeological investigation approved by CITY. All excavation plans shall be reviewed by an archaeologist prior to the start of, and during, the excavation.

3. Reserved Rights: CKD reserves unto itself and to its successors and assigns all rights accruing from its ownership of the Property which are not transferred and conveyed hereby, or which are not expressly granted to CITY or prohibited herein and which are not inconsistent with the purposes of the Easement, including the right to engage in or permit or invite others to engage in all uses of the Property which are not expressly prohibited herein and which are not inconsistent with the purposes of this Easement. Without limiting the generality of the foregoing, the following rights relating to the Property are expressly reserved by CKD, and its successors in interest and assigns:

(a) Relocation: The right to relocate to, reside in and use an Owner's Residence and Auxiliary Improvements in the Improved Areas described and shown on Exhibit C and any other improvements as are permitted under this paragraph.

(b) Owner's Residence: The rights, including all necessary development rights, to build, maintain, restore, remodel, expand and/or replace an Owner's Residence in accordance with the applicable law, land use policies, and regulations of the CITY. The Owner's Residence shall be located within the Improved Areas.

(c) Auxiliary Improvements: The right to build, maintain, restore, remodel, expand and/or replace Auxiliary Improvements ancillary to the Owner's Residence including, but not limited to, water tanks, garages, storage buildings, workshops, pools or pool cabanas, tennis courts, and non-commercial greenhouses, provided that such existing and new Auxiliary Improvements are in accordance with applicable law, land use policies, and regulations of the CITY. All Auxiliary Improvements shall be located within the Improved Areas. The location of any pool, pool cabana or tennis court improvements shall only be permitted in the rear or Southerly portion of the "Improved Area" at a distance not to extend beyond (100') One Hundred Feet from the Owner's Residence.

STAFF REPORT

Modification of Scenic Easement: Ross Woods Development – 1 Davey Glen Road

October 28, 2003

Page 10

(d) Landscaping: The right to landscape and re-landscape from time to time the areas designated as the Improved Areas and Landscape Areas on Exhibit C, accompanied by the obligation to maintain such landscape in a manner sufficient to avoid any negative impact on the Unimproved Areas of Parcel B. For purposes of this Easement, the term, "landscape" shall include trails, pathways, stairs, fountains, balustrades, benches and gardens and such minor structures as are necessary to protect any utilities servicing these improvements, such as spring boxes. The term "landscape" shall exclude improvements such as, but not limited to, temples, cupolas, gazebos and any other similar structures or improvements of five (5) feet or more in height ("Significant Structures").

(e) Water Rights: The right to hold and use all existing water rights now or hereafter accruing to the benefit of, appurtenant to, or located on the Property for the benefit of the Property for residential, landscaping and ecological uses.

(f) Home Business: The right to engage in any business in the Improved Areas that is conducted in the home of a person residing on the Property or which involves the provision of goods and services in accordance with the applicable law, land use policies and regulations of the CITY.

(g) Irrigation Facilities. The rights to install, use, repair, replace, modify, expand or maintain necessary facilities for landscape irrigation, including pipes, utility lines and access to protect such facilities, in the Improved and Landscape Areas, and the right to maintain underground pipes and utility lines within the Unimproved Areas.

(h) Utilities: The rights to install, modify, relocate, upgrade, repair and maintain utility systems, including, without limitation, water, sewer, power, fuel and communication lines and related facilities.

(i) Energy Resources: The right to place or construct facilities in the Improved Areas for the development and utilization of energy resources, including, without limitation, solar, water, wood or alcohol for use principally on the Property.

(j) Driveways: The right to construct, repair and maintain a single driveway to, and parking area in, the Improved Areas.

(k) Fencing: The right to construct, repair, modify and maintain fencing and gates along the perimeter of the ***"Unimproved Areas", with the exception of the 203.83 foot property line boundary running along Davey Glen Road as shown in Exhibit C, where fencing of any kind is prohibited.*** ~~Improved Areas, dividing the Unimproved Areas from the other Areas of the Property and~~ ***Fencing shall be permitted*** anywhere within the Landscaped and Improved Areas. The materials, style and location of the fencing in other areas shall comply with applicable laws, rules, and regulations.

4. Disputes and Remedies. If CITY determines that CKD, or CKD's successors an interest or any occupant of the Property is conducting or allowing a use, activity, or condition on the

STAFF REPORT

Modification of Scenic Easement: Ross Woods Development – 1 Davey Glen Road

October 28, 2003

Page 11

Property which is prohibited by the terms of this Easement or that a violation is threatened, CITY shall give written notice to the owner of the Property of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purposes of this Easement, to restore the portion of the Property so injured.

4.1 Consultations Regarding Interpretation and Enforcement of Easement. When any disagreement, conflict, need for interpretation, or need for enforcement arises between the parties to this Easement, each party shall first consult with the other party in good faith about the issue and attempt to resolve the issue without resorting to arbitration or legal action.

4.2 Acts Beyond the CKD's Control. Nothing contained in this Easement shall be construed to entitle CITY to bring any action against CKD for any injury to or change in the Property resulting from causes beyond CKD's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by CKD under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

5. Access. No right of access is given to the general public to any portion of the Property as a consequence of this Easement.

6. Costs and Responsibilities. CKD hereby retains the responsibility for ownership, operation, upkeep, and maintenance of the Property.

7. Extinguishment. If circumstances arise in the future which render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether whole or in part, by the written agreement of CITY, effective upon the recording of such agreement in the Official Records of the County Recorder of San Mateo County, or by judicial proceedings in a court of competent jurisdiction.

7.1 Compensation. If this Easement is taken, in whole or in part, by exercise of the power of eminent domain, or the sale, exchange, involuntary conversion or condemnation to a governmental entity under the threat of such action, for the purpose of a public park, open space, watershed or public trail, or other open space purpose, then this Easement shall be extinguished for those portions taken or sold and all compensation or proceeds of such actions shall go to CKD.

7.2 Amendment. If circumstances arise under which an amendment to or modification to this Easement would be appropriate, CKD and CITY may jointly amend this Easement; provided that no amendment shall be allowed that will affect the status of CITY under any applicable laws, including Sections 815 et. seq. of the California Civil Code, as amended, and any amendments to this Easement shall be in writing, shall be duly executed by CITY and the CKD, shall refer to this Easement by reference to its recordation data, and shall be recorded in the Official Records of San Mateo County, California.

8. Subsequent Conveyance of the Property. CKD shall incorporate by reference hereto the terms of this Easement in any deed or other legal instrument by which CKD divests itself of

STAFF REPORT

Modification of Scenic Easement: Ross Woods Development – 1 Davey Glen Road

October 28, 2003

Page 12

any interest in all or a portion of the Property, including, without limitation, a leasehold interest. The failure of CKD to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

9. Estoppel Certificates. Upon request by CKD, CITY shall, within 20 days after receipt of such request, execute and deliver to the CKD any document, including an estoppel certificate, which certifies CKD's compliance with any obligation of CKD contained in this Easement and otherwise evidences the status of this Easement as may be reasonably requested by CKD.

10. Notices. Any notice demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid or by next business day express mail, or courier, addressed as follows:

To CKD: CKD Limited Partnership, a California limited partnership

1 Davey Glen Road
Belmont, California 94002
Attention: Dr. Gene Lee
Phone No.: (650) 637-1217
Facsimile No.: (650) 637-0820

To CITY: City of Belmont
Parks and Recreation Department
1070 Sixth Avenue
Belmont, California 94002
Phone No.: (650) 595-7441
Facsimile No.: (650) 595-7419

or to such other address as either party from time to time shall designate by written notice to the other.

STAFF REPORT

Modification of Scenic Easement: Ross Woods Development – 1 Davey Glen Road

October 28, 2003

Page 13

11. Recordation. This instrument shall be recorded by CITY in the Official Records of San Mateo County, California. CITY may re-record this Easement whenever re-recording is required to preserve CITY's rights in this Easement.

12. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California.

(b) Expenses. In the event of litigation or arbitration between the parties to enforce or interpret this Easement, the prevailing party will be entitled to recover court or arbitration costs and reasonable fees of attorneys, accountants and expert witnesses incurred by such party in connection with the action or arbitration, including such costs and fees incurred because of any appeals. The prevailing party also shall be entitled to recover all such costs and fees that may be incurred in enforcing any judgment or award, and this provision shall not be merged into any judgment but shall survive any judgment.

(c) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby so long as the purposes of this Easement can still be carried out.

(d) No Third party Rights. This instrument is made and entered into for the sole benefit and protection of CKD and CITY and their respective successors and assigns. No person or entity other than the parties hereto and their respective successors and assigns shall have any right of action under this Easement or any right to enforce the terms and provisions hereof.

(e) No Forfeiture. Nothing contained herein is intended to result in a forfeiture or reversion of CKD's fee title in any respect to CITY, or its successors or assigns. CKD specifically reserves the right to convey fee title to the Property subject to this Easement.

(f) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, shall continue as a servitude running in perpetuity with the Property, and shall inure to the benefit of the parties and their respective successors and assign.

(g) Termination of Rights and Obligations. Except as expressly provided otherwise in this instrument, a party's rights and obligations under this Easement shall terminate upon the transfer of the party's interest in this Easement or the fee title to the Property, as the case may be, except the rights, obligations, and liability relating to acts or omissions occurring prior to transfer shall survive transfer.

STAFF REPORT

Modification of Scenic Easement: Ross Woods Development – 1 Davey Glen Road

October 28, 2003

Page 14

(h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(i) Counterparts. The parties may execute this instrument in two or more counterparts; each counterpart shall be deemed an original instrument. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(j) Exhibits. All Exhibits referred to in this Easement are attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD, ITS SUCCESSORS AND ASSIGNS FOREVER.

IN WITNESS WHEREOF, CKD has set its hand on the day and year first written above.

“CKD”

CKD LIMITED PARTNERSHIP,
A California limited partnership

By:

Its: _____